

**REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101**



Proceeding under Section 3008 (a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g).

Docket No. RCRA-07-2009-0062

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ENVIRONMENTAL PROTECTION
AGENCY
REGION VII
REGIONAL HEARING CLERK

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent

Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA each agree to bear their own costs and attorneys' fees.
7. The parties agree that the Respondent shall pay a penalty of zero dollars (\$0) because Respondent has certified to EPA, under penalty of perjury, that he has an inability to pay any penalty for the violations cited in the Complaint.
8. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
9. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 14 of the Final Order provides Respondent with written notice, in accordance with Paragraph 24 of the Final Order, that all requirements hereunder have been satisfied.
10. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties up to \$27,500 per day of non-compliance.
11. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

12. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Compliance Actions

13. Within sixty (60) days of the effective date of this Final Order, Respondent shall clean up and manage properly any remaining releases of used oil at the facility in accordance with 40 C.F.R. § 279.45(h). In addition, Respondent must submit to EPA photographs of these spill areas before and after the releases were cleaned up and copies of all manifests and/or bills of lading from the off-site shipment of the clean-up residues.

14. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Elizabeth Koesterer
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

15. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order, if needed, to:

Tom D. Tobin, Esq.
Tobin Law Offices, P.C.
P.O. Box 730
422 Main Street
Winner, South Dakota 57580

and to:

Neal Connelly
1609 150th Street
Luverne, Iowa 50560

16. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times to monitor Respondent's implementation of, and compliance with, the terms of this Final Order. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

B. Parties Bound

17. This Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

C. Reservation of Rights

18. This Consent Agreement and Final Order only addresses all administrative matters alleged in EPA's September 29, 2000 Complaint, Docket No. RCRA-07-2000-0062. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

19. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

20. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

21. Except as expressly provided herein, including the provisions of Section B of this Consent Agreement and Final Order, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

22. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or

other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

23. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

24. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

For the Respondent:

Neal Connolly
Name: NEAL CONNOLLY
Printed Name
Title: owner E.S.S.

6-19-02
Date

For the Complainant:

The United States Environmental Protection Agency

Alex Chen
Alex Chen
Assistant Regional Counsel

6-25-02
Date

William A. Spratlin
William A. Spratlin, Director
Air, RCRA and Toxics Division

6-25-02
Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional
Judicial Officer.

Karina Borromeo
~~ROBERT PATRICK~~ Karina Borromeo
Regional Judicial Officer

July 1, 2002
Date

IN THE MATTER OF Neal Connelly d/b/a Environmental Safety Services, Respondent
Docket No.: RCRA-07-2000-0062

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Alex Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Neal Connelly
1609 150th Street
Luverne, Iowa 50560

Tom D. Tobin, Esq.
Tobin Law Offices, P.C.
P.O. Box 730
422 Main Street
Winner, South Dakota 57580


and

Copy by First Class Pouch Mail to:

Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

Honorable Thomas W. Hoya
Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

Dated: 7/1/02


Kathy Robinson
Regional Hearing Clerk